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ABSTRACT

Guidelines for colleges concerning the privacy of employee records are presented in two policy statements. Institutional policy should minimize intrusiveness, maximize fairness, and create legitimate expectations of confidentiality. In addition to strengthening professional equity of treatment, confidentiality permits consideration of both adverse criticism and positive advocacy. Principles that should be followed in formulating an employee privacy policy are identified, with attention to: external investigations, criminal records, consent to disclosure, designation of available records, review and correction of records, internal use, and external disclosure of information. Prior to gathering information about an individual from sources outside the institution, the college should notify the individual. An institution should not solicit or consider information regarding an employee's arrest record except as consistent with statute, government regulation, or court decision. The college should not disclose from official records personally identifiable information about an individual without explicit authorization of such individual, except in certain circumstances, which are identified. (SW)

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SELF-REGULATION INITIATIVES:

GUIDELINES FOR COLLEGES AND UNIVERSITIES

No. 7 - December 1981

No. 8 - February 1983

CONFIDENTIALITY OF COLLEGE AND UNIVERSITY
FACULTY PERSONNEL FILES: ITS APPROPRIATE
ROLE IN INSTITUTIONAL AFFAIRS [and]
STATEMENT ON ACCESS TO AND DISCLOSURES
FROM EMPLOYEE RECORDS.

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Self-Regulation Initiatives: Guidelines for Colleges and Universities

No. 7
December 1981

Confidentiality of College and University Faculty Personnel Files: Its Appropriate Role in Institutional Affairs

American colleges and universities are dedicated to sustaining and fostering the values of equity of human treatment, equal opportunity of access, collegiality of spirit in association, academic freedom, and intellectual excellence. Within the complex context of the values of academic life in the many educational institutions devoted to these principles, the difficult issue of confidentiality can arise in conjunction with faculty appointments and promotions. "Confidentiality," as used in this statement, refers to the protection of statements and other such evaluative materials, as well as the identities of authors of letters in deliberations concerning the appointment, promotion, and granting of tenure to faculty members.

Institutions have long based the appointment and advancement of faculty members on academic qualifications described rigorously in evaluations of an individual candidate's work by academic peers inside and/or outside the institution. At many institutions these evaluations, provided without fee as a professional duty, are submitted in confidence. They are made available for inspection only to those legitimately involved in the faculty appointment or review process. For these institutions, one concern surrounding confidentiality is that within these various processes any faculty member, from within the institution or from another institution, who is asked to evaluate a colleague should have the assurance that the particulars of his or her judgments will be held in confidence and will not be made available to anyone except those duly elected or appointed to participate at some level of the review.

We wish at the outset to state clearly that confidentiality is not secrecy. There are three general principles which accompany confidentiality and assure its correct application:

The procedures by which academic judgments are made must be public so that candidates and members of educational communities generally can be assured that the processes of evaluation provide for a full and fair review of candidates' qualifications.

An avenue for redress must be available if improprieties in the process are believed to have occurred.

On October 13, 1981, the Board of Directors of the American Council on Education adopted this statement on the role of confidentiality in faculty personnel matters. The Statement was drafted by ACE's Committee on Confidentiality, a task force of college and university presidents from a diverse range of public and private institutions. It was reviewed and approved by ACE's Advisory Committee on Self-Regulation and was discussed at several meetings of the ACE Board of Directors.

The statement, prepared in response to a request by the Association of American Universities, is designed to serve as a statement concerning the importance of confidentiality in higher education that could be introduced in courts and other administrative settings. The Association of American Universities is also preparing a statement on this subject.

Candidates for faculty advancement should be afforded the opportunity to know and to benefit from the deliberation of peers.

Although appointment and promotion procedures will clearly differ from institution to institution and will vary in accordance with any collective bargaining agreement, such procedures for evaluation in institutions of higher education should ensure that these three principles are incorporated in the review process.

As part of the procedures for making responsible decisions about faculty appointments, all institutions have a clear obligation to obtain objective information and candid appraisals of candidates. Most educators believe that confidentiality encourages candor and openness in the evaluation of individuals under review and therefore is crucial to that process.

Confidentiality can strengthen professional equity of treatment as distinct from results achieved through favoritism or popularity.

Confidentiality need not be contrary to equality of opportunity when it allows supportive assertion of considerations properly weighed in particular cases with all other relevant factors.

Confidentiality can promote intellectual excellence, when it allows candor without injury to feeling, and supportive praise without inflation of esteem. It can permit adverse criticism and positive advocacy in a way that allows either to be objectively assessed and, if necessary, discounted.

Fair and searching assessment of colleagues is the surest guarantee of professional advancement on authentic grounds, for when evaluations are full and honest, and when personalities are not at issue, the relaying of useful information to faculty members under review is expedited and potentially far more effective than it can be when evaluations are unavailable or less candid or less precise. Without the assurance of confidentiality, higher education may risk a revival of appointment and advancement processes that rely primarily on informal conversations and oral evaluations which are a

potentially deeply-discriminatory means of evaluation that current promotion and tenure processes and public laws are, in fact, intended to expunge.

We recognize that confidentiality is not absolute. In many instances disclosure of confidential information is sought by individuals under review. When that occurs significant public interest must be weighed—the protection of individual rights and the preservation of procedures which depend upon confidentiality for their effectiveness and fairness. Thus, the interests of the individual seeking disclosure of information held in confidence must be balanced against the interests of institutions of higher education in maintaining equity and quality.

Because institutions of higher education are being asked with increasing frequency to disclose confidential information, they should make efforts to define the scope of investigation so that it be limited to what is reasonably necessary to shed significant light upon the matter under investigation. At the same time they should make clear to federal officials the need to avoid needless proliferation of disclosure, unnecessary duplication of documents, and any investigational action that would impair the functioning of the institution.¹

We believe that confidentiality protects the rigor and dispassion of judgments rendered in promotion of faculty; and that confidentiality can be effectively exercised within the sturdy texture of academic custom and with proper permeability to the law.

We are therefore committed to the preservation of confidentiality within the review process at those institutions which honor it, and which, in so doing, honor the principles of equity, equal opportunity, collegiality, academic freedom, and intellectual excellence.

ACE Committee on Confidentiality
October 1981

¹ For one presentation of guidelines regarding access to confidential information, the reader may wish to see the "1979 Report of the Committee on Confidentiality in Matters of Faculty Appointment," *The University of Chicago Record*, May 22, 1979, pp. 165-170.

This statement is one in a series of policy guidelines developed to help higher education respond to issues by means of voluntary self-regulation. The Office on Self-Regulation Initiatives, a program of the American Council on Education, works cooperatively with representative associations and institutional leaders in identifying issues on which self-regulation is needed, formulating responses to those issues, and distributing the resulting guidelines and recommendations.

College and university administrators are urged to review the guidelines as a basis for considering changes in existing institutional policies. Each statement is developed through a process of wide review among representatives of different types of institutions and professional responsibilities in higher education. They are intended to summarize general principles of good practice that can be adapted to the specific circumstances of each college and university.

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For further information, contact Elaine El-Khawas, Director, Office on Self-Regulation Initiatives. Additional copies of this statement may be obtained upon request to the office. Please include a self-addressed, stamped envelope.

American Council on Education

One Dupont Circle, Washington, D.C. 20036

Self-Regulation Initiatives: Guidelines for Colleges and Universities

No. 8
February, 1983

Statement on Access to and Disclosures from Employee Records

PREAMBLE

Over the last several years, Congress has become increasingly interested in securing citizens' right to privacy. This interest manifested itself in the privacy of student records with the enactment of the Family Educational Rights and Privacy Act (Buckley Amendment). In July 1977, the Privacy Protection Study Commission reported 164 recommendations to Congress, including several relating to statutory changes in the Buckley Amendment and a charge to all employers to examine personnel recordkeeping procedures to assure fair information practice policies for employment records.

The following statement was developed by a Washington-based Privacy Task Force convened by the American Council on Education, composed of representatives of higher educational associations.¹ The statement is designed to assist colleges and universities in fulfilling their responsibilities in matters relating to personnel records. It is intended to serve, not as a prescription for practice in individual institutional settings, but as a guide to developing or strengthening internal policies and practices with regard to academic and nonacademic personnel files.

On January 19, 1983 the Board of Directors of the American Council on Education endorsed the statement on the privacy of employee records and commended it to all colleges and universities as an effective guide to institutional policy.

INTRODUCTION

An employee has an interest in the exclusion of false and misleading statements from his or her personnel files, and in avoiding the dissemination of critical and perhaps embarrassing information. An institution has an interest in encouraging candid evaluation in order to arrive at the most effective personnel decisions. A referee has an interest in maintaining the confidentiality of the appraisal and in having the evaluation treated in the manner in which he or she understood it to be submitted.

Institutions through appropriate bodies should review and evaluate their employment and personnel recordkeeping practices, including a review of all applicable state laws and regulations and:

- the number and type of records maintained on individuals, including former faculty and staff and applicants;

1 Representatives of the following higher education associations participated in the construction of this statement: American Association of Community and Junior Colleges, American Association of State Colleges and Universities, American Association of University Professors, Association of Community College Trustees, Association of American Colleges, Association of American Law Schools, Association of American Medical Colleges, Association of American Universities, Association of Catholic Colleges and Universities, Association of Jesuit Colleges and Universities, College and University Personnel Association, National Association of College and University Attorneys, National Association of College and University Business Officers, National Association of Independent Colleges and Universities, and National Association of State Universities and Land-Grant Colleges. Participation on the Task Force does not necessarily imply formal organization approval.

- the items of information contained in personnel records and each kind of personnel record maintained;
- the uses made of the items of information in each type of record within the institution and the circumstances under which disclosure may be made to parties outside the institution; and
- the extent to which faculty, students, and staff are made aware of personnel records kept about them and the uses of information in the records.

In developing proper and fair information practices, institutions also should address the following areas:

- categories of information relevant to specific personnel decisions;
- procedures for informing individuals of the types of information that are being maintained about them and the uses made of such information;
- procedures to assure the accuracy, timeliness, and completeness of information collected, used, maintained, or disclosed about individuals;
- procedures to limit the internal and external disclosure of records kept on individuals; and
- challenges by individuals to the accuracy and use of records maintained about them.

GUIDELINES

The following guidelines are provided as principles that an educational institution should consider in formulating its own employee privacy policy. Overall, the goal of the guidelines is to minimize intrusiveness, maximize fairness, and create legitimate expectations of confidentiality. (Use of the term "individual" herein shall mean applicant, employee, or former employee.)

1. External Investigations.

- a. Prior to any gathering or hiring others to gather information about an individual from sources outside the institution, the institution should ordinarily notify the individual, in accordance with prevailing institutional policies, of:
 - i. the types of information to be gathered; and
 - ii. the techniques to be used and sources from which information will be sought concerning character or reputation information.
- b. The institution should not engage an investigative organization without ascertaining that the practices of the organization with respect to personal information comply with the policies of the institution.
- c. The institution should not solicit or retain information about an individual that is not relevant to a personnel decision.
- d. The institution should not attempt to obtain, nor allow any agent to attempt to obtain, information about an individual through misleading devices or in a manner that conceals the purpose of the inquiry or conceals the identity of the institution.

2. Criminal Records.

- a. An institution should not solicit or consider information regarding an individual's arrest record except as consistent with statute, government regulation, or court decision.
- b. When an arrest record is lawfully sought or used by an institution to make a specific decision about an individual, the institution should not maintain the record for a period longer than specifically approved by law, if any, or unless there is an outstanding indictment.
- c. Unless otherwise required by law, an institution should not solicit or consider information about convictions except in circumstances where such information is directly relevant to an employment decision.

3. Consent to Disclosure

- a. No institution or its agent should ask, require, or otherwise induce an individual to sign any statement authorizing any person or institution to disclose information about him/her or about any other individual, unless the statement is:
 - i. in plain language;
 - ii. dated;
 - iii. specific as to the individuals or institutions who are authorized to disclose information and who are known at the time the authorization is signed;
 - iv. specific as to the nature of the information to be disclosed;
 - v. specific as to the individuals or institutions to whom the individual is authorizing the information to be disclosed;
 - vi. specific as to the purpose(s) for which the information may be used by any of the parties named in (v) at the time of the disclosure; and
 - vii. specific as to the expiration date of the disclosure agreement, which should be for a reasonable period of time.

4. Designation of Available Records.

- a. The institution should designate clearly those records about an individual that the institution:
 - i. will allow the individual to review, subject to reasonable procedures, on request; or
 - ii. will make available to the individual, subject to specifically prescribed limitations; or
 - iii. will hold unavailable to the individual.
- b. The institution should assure that its faculty and staff are informed as to which records are included in categories (a) (i), (ii), and (iii) above.

5. Review and Correction of Records.

- a. Upon request by an individual, the institution should:
 - i. inform the individual, after verifying the individual's identity, whether it has any recorded information pertaining to him/her that is included in records that may be reviewed; and
 - ii. permit the individual to review such record(s) or, if preferred, apprise the individual of the nature and substance of any such record(s). (Upon request, an individual who is the subject of medical information maintained by an institution should be allowed to review the information either directly or through a licensed medical professional designated by the institution or by the individual.)
- b. The institution should permit an individual to request correction or amendment of any personally identifiable record that has been designated by the institution as an available record. The institution should:
 - i. make the requested correction or amendment within a reasonable period of time; or
 - ii. if the institution does not make the requested correction or amendment, permit the individual to file a statement setting forth the reasons for the requested correction. The institution may submit a statement setting forth reasons for refusing to make the correction or amendment.
- c. The institution should furnish the correction or amendment to any party specifically designated by the individual who the institution has reason to believe may have received the information in question within the prior two years.
- d. In all subsequent disclosures of information that is subject of a dispute, the institution should furnish an indication of the dispute.

6. Internal Use.

- a. All personnel, employment, or related records should be available only to authorized users for authorized purposes. The institution should maintain separate access to such records in the following or similar categories:
 - i. personnel
 - ii. payroll

- iii. security
- iv. employment-related medical
- v. voluntary health care
- vi. life or health insurance
- vii. work-related insurance

7. External Disclosure of Information.

The institution should not disclose from official records personally identifiable information about an individual without explicit authorization of such individual, except in the following circumstances:

- a. in response to a request to provide or verify information designated by the institution as directory information, which should not include more than:
 - i. the fact of past or present employment;
 - ii. dates of employment; and
 - iii. title or position.
- b. in response to a request by a properly identified law enforcement authority, to provide an individual's dates of attendance at work and home address;
- c. to protect the legal interests of the institution when the institution believes the actions of the individual violate the conditions of employment or otherwise threaten physical injury to the property of the institution or to others;
- d. to a law enforcement authority when the institution reasonably believes that an applicant, employee, or former employee may have engaged in illegal activities;
- e. pursuant to a federal, state, or local government statute or regulation that specifically requires disclosure of certain information to certain parties;
- f. to a collective bargaining agent pursuant to a collective bargaining contract;
- g. to an agent or contractor of the institution, provided:
 - i. that only such information is disclosed as is necessary for such agent or contractor to perform its function for the institution; and
 - ii. that the agent or contractor is prohibited from redisclosing the information.
- h. in response to a lawfully issued administrative summons or judicial order, including a search warrant or subpoena; or
- i. in compelling circumstances affecting the immediate health or safety of the individual.

The institution should clearly inform applicants upon request, and all faculty and staff automatically, of the types of disclosures that may be made of information from the records maintained on them and of procedures for involving the individual in particular disclosures.

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